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20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]
MSC 01 310 61032

Office: NEW YORK

Date: JUL 29 2008

IN RE: Applicant:

[REDACTED]

APPLICATION:

Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director (director) in New York. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish (1) that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and (2) that she is admissible, in that she willfully submitted fraudulent evidence in support of her application.

On appeal counsel submits additional evidence of the applicant's continuous residence in the United States before January 1, 1983 through May 4, 1988, and asserts that the applicant did not willfully submit any fraudulent document.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and its amenability to verification. *See* 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the

factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of Colombia who claims to have lived in the United States since May 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on August 6, 2001. The AAO notes that the applicant was 13 years old in May 1981. As evidence of her residence in the United States during the years 1981 through 1988, the applicant submitted a series of documents which had originally been filed in 1991. They included the following pertinent materials:

- An affidavit from [REDACTED], a resident of Great Neck, New York, dated May 22, 1991, stating that the applicant worked for her as a housekeeper from March 1984 to 1991 at [REDACTED]
- An affidavit from [REDACTED], a resident of Maspeth, New York, dated July 11, 1991, stating that the applicant lived at his rental property located at [REDACTED] New York, from May 1984 through June 1988.
- Affidavits from [REDACTED] a resident of Queens, New York, from [REDACTED] of Queens, New York, from [REDACTED], a

resident of Paterson, New Jersey, from [REDACTED], a resident of Corona, New York, and from [REDACTED] a resident of Woodside, New York, all dated July 11, 1991, stating that they all know the applicant resided at [REDACTED] New York from May 1981 to May 1984, and at [REDACTED] New York, from May 1984 to June 1988.

An airline ticket in the applicant's name from Eastern Airlines, with an issue date of September 10, 1987, for a flight from New York to Miami on September 15, 1987, with an indicated connection to Cali, Colombia.

On January 4, 2007, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence submitted was not sufficient to establish by a preponderance of the evidence that the applicant was continuously resident in the United States for the requisite period to adjust status under the LIFE Act, and that the applicant willfully submitted a fraudulent airline ticket in an attempt to establish her eligibility for the benefit sought. The applicant was granted 30 days to submit additional evidence.

In response the applicant offered an explanation for the fraudulent airline ticket cited in the NOID and submitted some additional documentation, including affidavits from [REDACTED]

[REDACTED] which were translated by [REDACTED] on January 31, 2007, indicating that the applicant visited Colombia from September 15, 1987 through October 10, 1987.

On February 6, 2007, the director issued a Notice of Decision denying the application. The director found that the applicant's rebuttal and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial. The director concluded that the evidence of record failed to establish that the applicant entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988, as required for legalization under the LIFE Act.

On appeal, counsel asserts that the applicant was present in the United States before January 1, 1982. Counsel reiterates that the applicant did not intentionally submit the fraudulent airline ticket and submits the following additional documentation as evidence of her residence in the United States during the 1980s:

- An affidavit from [REDACTED] a resident of Whitestone, New York, dated February 17, 2007, stating that he has known the applicant since 1985, when the applicant patronized the grocery store where he worked, and that he and the applicant remained friends over the years, though they lost touch from August 1988 to January 2000.

- An affidavit from [REDACTED], a resident of Flushing New York, dated February 20, 2007, stating that she met the applicant around the spring of 1984, when the applicant bought food from her at Flushing Meadow Park during soccer games, and that they have socialized through the years.
- An affidavit from [REDACTED], a resident of [REDACTED] Great Neck, New York, dated February 22, 2007, stating that around May 1981 the applicant appeared at her doorstep, that she provided her with room and board until April or May 1984, at which time she moved in with her sister at [REDACTED] Avenue, Brooklyn, New York, and that they have remained in close touch over the years.
- An affidavit from [REDACTED], a resident of College Point, New York, dated March 6, 2007, stating that he met the applicant around the summer of 1982, in Flushing Meadow Park, New York, where the Colombian community gathers and the applicant used to sell things. Later on [REDACTED] states that the applicant was a tenant of his.
- An undated affidavit from [REDACTED] a resident of Clifton, New Jersey, stating that she met the applicant around the summer of 1983 through a friend, at which time the applicant was living with [REDACTED] at [REDACTED] in Great Neck, New York, that on or about September 15, 1987, when the applicant was living at [REDACTED] New York, she personally drove the applicant to the airport to travel to Colombia, and that the applicant returned to the United States on or about October 10, 1987 from Tijuana, Mexico.

An affidavit from [REDACTED] a resident of Long Island, New York, dated March 11, 2007, stating that he met the applicant at a New Year's Eve party in 1984 at his friend's apartment at [REDACTED], New York, that he shared with the applicant.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Also before the AAO in its consideration of this appeal are some additional letters that were prepared in conjunction with an application for temporary resident status (Form I-687) the applicant filed in 2004 (MSC 04 363 10200). They include the following:

- A series of letters from individuals who claim to have employed the applicant as a housekeeper: (1) from [REDACTED] a resident of Deerfield Beach, Florida, dated March 6, 2006, stating that the applicant worked for her from 1983 to 2001, when she resided in Little Neck, New York; (2) from [REDACTED] a resident of Little Neck, New York, dated March 1, 2006, stating that the applicant worked for her from 1984 to the end of 2001; (3) from [REDACTED] residents of Little Neck, New York, dated March 3, 2006, stating that the applicant worked for them from 1983 or 1984 to 2002; (4) from [REDACTED] a resident of Brooklyn, New York, dated March 3, 2006, stating that the applicant worked for him from 1985 to 2001 and that he was her physician; and (5) from [REDACTED] a resident of Great Neck, New York, dated March 1, 2006, stating that the applicant worked for her in an unspecified capacity (presumably as a housekeeper) from May 1981 to May 1984.
- A letter from [REDACTED] a resident of College Point, New York, dated March 7, 2006, stating that she met the applicant in New York in the summer of 1982, through an old family connection in Colombia, that she gave the applicant some English lessons, and that they have remained friends over the years.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The affidavit from [REDACTED], dated February 22, 2007, stating that she has known the applicant since May 1981 when the applicant appeared at her doorstep, is inconsistent with information provided on the application for temporary resident status (Form I-687) the applicant filed in 2004. On the Form I-687 the applicant stated that she resided at [REDACTED] Avenue, Brooklyn, New York, from May 1981 to June 1990, and did not identify [REDACTED] address at [REDACTED] as her place of residence from 1981 to 1984, or any other time.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The affidavit from [REDACTED] also lacks any details regarding why the applicant, a child of 13 in 1981, was living with her (assertedly until 1984) and not with her relatives, specifically her sister and her brother-in-law, during that time, and whether she attended school in those years. For the reasons discussed above, the affidavit has limited probative value as evidence of the applicant's residence in the United States in the 1980s.

As for the affidavits by [REDACTED]

[REDACTED]
Aguirre, dated in 2007, as well as letters from individuals who claim to have employed the applicant as a housekeeper – [REDACTED]

[REDACTED] dated in 2006, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. While they all claim to have known the applicant since the early 1980s, the affiants provide almost no information about her life in the United States and their interaction with her over the years. While some of the affidavits were accompanied by the affiant's identification, none of the affidavits are accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s.

In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits from [REDACTED]

[REDACTED] all residents of Cali, Colombia, attesting to the applicant's visit to Colombia in 1987, are of no probative value as evidence of the applicant's presence and continuous residence in the United States from January 1, 1982 through May 4, 1988. The affiants provide information of the applicant's trip to Colombia in 1987, but nothing about the applicant's residence in the United States during the requisite period for LIFE legalization.

As to the airline ticket from Eastern Airlines dated September 10, 1987, the applicant admitted that the document was fraudulent. The document is of no probative value as evidence of the applicant's continuous residence in the United States during the 1980s.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.